

THE CAVANAGH LAW FIRM

A Professional Association

Phoenix • www.cavanaghlaw.com • Sun City

1850 North Central Avenue
Suite 2400

Phoenix, Arizona 85004
Telephone: 602-322-4000
Facsimile: 602-322-4100

Julie A. Pace
Phone: 602-322-4046
Facsimile: 602-322-4101
Email: jpace@cavanaghlaw.com

March 14, 2014

Heidi Nunn-Gilman
Phone: 602-322-4080
Facsimile: 602-322-4101
Email: hnunngilman@cavanaghlaw.com

VIA ELECTRONIC FILING

Executive Secretary
National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570-0001

Re: A.W. Farrell & Son, Inc. and United Union of Roofers,
Waterproofers, and Allied Workers, Local 162
NLRB Case Nos.: 28-CB-080496, 28-CB-085690, 28-CA-085434

Dear Executive Secretary:

On behalf of A.W. Farrell & Son, Inc., (“AWF” or “Company”), we are writing in response to the letter to the Executive Secretary from David Rosenfeld on behalf of the United Union of Roofers, Waterproofers, and Allied Workers, Local 162 (“Union” or “Local 162”). The Union erroneously stated that a separate case decided by the Board, 360 NLRB No. 34 (2014) is *res judicata* in the matters raised in the instant case. The Union is incorrect, and the Board’s decision in 360 NLRB No. 34 (2014) does not control Case Nos. 28-CB-080496, 28-CB-085690, 28-CA-085434.

The case of *Sheet Metal Workers International Association*, 360 NLRB No. 34, related to a 10(k) hearing. The Board decided to quash the notice of hearing. The Board did not address or decide the substantive legal questions that are at issue in Case Nos. 28-CB-080496, 28-CB-085690, 28-CA-085434.

Res judicata applies only when the questions of law or fact have distinctly been put at issue and directly determined by a prior court in a proceeding between the same parties. *Res judicata* requires a final judgment on the merits. *Sabine Towing and Transportation Co.*, 263 NLRB 114 (1982) (citing *Southern Pacific R. Co. v. United States*, 162 U.S. 1, 48-49 (1897)). The Board’s decision in 360 NLRB No. 34 dealt solely with the question of whether to proceed with the 10(k) case or quash the Notice of Hearing. It did not address the course of dealings between AWF and the Union or other issues in the case presently before the Board. The questions in the case presently before the Board were not “distinctly put in issue and directly determined,” *id.* at 120, by the Board in the previous 10(k) case, and therefore, *res judicata* does

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not apply. It is disingenuous of the Union to suggest that the Board made any substantive decision that is binding on 28-CB-080496, 28-CB-085690, 28-CA-085434. The Board must decide the cases presently before it on their briefs and merits. Case 360 NLRB No. 34 is inapplicable. Therefore, we request that the Executive Secretary disregard the letter submitted by Roofers Local 162 incorrectly stating that *res judicata*.

Sincerely,

A handwritten signature in black ink that reads "Heidi Nunn-Gilman" followed by a stylized monogram "hcg".

Julie A. Pace

Heidi Nunn-Gilman

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CERTIFICATE OF SERVICE

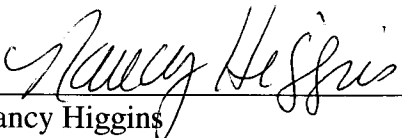
The undersigned hereby certifies that a true and correct copy of the foregoing Letter was filed electronically via E-Gov with the National Labor Relations Board Office of Executive Secretary on March 14, 2014 with copy by electronic mail to:

David Rosenfeld, Esquire
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-6430
drosenfeld@unioncounsel.net

Richard G. McCracken, Esquire
McCracken, Stemerman & Holsberry
1630 S. Commerce Street, Suite A-1
Las Vegas, NV 89102-2705
rmccracken@dcbsf.com

Gregory Gleine
National Labor Relations Board
1240 East 9th Street
Room 1695
Cleveland, OH 44199-2086
gregory.gleine@nlrb.gov

Tony Smith
Nathan Higley
National Labor Relations Board
600 South Las Vegas Boulevard #400
Las Vegas, NV 89101
larry.smith@nlrb.gov
nathan.higley@nlrb.gov



Nancy Higgins
Legal Assistant
The Cavanagh Law Firm
1850 North Central Avenue, Ste. 2400
Telephone: (602) 322-4046
Attorneys for A.W. Farrell & Son, Inc.